



North Carolina General Assembly

ENVIRONMENTAL REVIEW COMMISSION MINUTES

May 9, 2008

The Environmental Review Commission was scheduled to meet at 9:30 a.m., Friday, May 9 in Room 544 of the Legislative Office Building. Co-Chairman Pryor Gibson, III presided. The meeting was called to order at 9:39 a.m.

Welcome and Attendance

Members present were Co-Chairman Dan Clodfelter, Co-Chairwoman Lucy Allen, Co-Chairman Pryor Gibson, III, Senator Stan Bingham, Senator James Forrester, Senator Ellie Kinnaird, Representative Jim Harrell, Representative Pricey Harrison, Representative Ruth Samuelson, and Representative Edith Warren. Commission staff present were Commission Counsel George Givens, Assistant Counsel Jeffrey Hudson, Assistant Counsel Jennifer McGinnis, Commission Analyst Jennifer Mundt, Research Assistant Mariah Matheson and Commission Clerk Jessica Kozma Bennett.

A meeting notice was distributed to staff, members and outside parties via regular mail and electronically and is included as an attachment to the minutes as **Exhibit A**. A reminder was sent electronically May 9. The meeting agenda and visitor's registration sheets are attachments to these minutes and referred as **Exhibit B and Exhibit C**, respectively.

Co-Chair Gibson recognized co-chairs of the Commission; she then recognized staff, thanking them for their work for the Commission.

Report to the Commission and Explanation of Agenda Items

Mr. Givens noted for the record the Commission's April 29 planning meeting and explained a recent negative opinion regarding the use of covered pipes. Any potential legislation regarding flame retardants will be taken up for discussion during the 2009 long session and Mr. Givens then announced that the Commission would meet the first Wednesday after the start of session. He also said the Committee to study stormwater rules had met twice, and that there were requests for an additional meeting in Eastern North Carolina. He announced subcommittee meetings and then recognized Mr. Richard Rogers with the State's Clean Water Trust Fund.

Mr. Rogers invited ERC members to attend third annual strategic vision meetings. Mr. Givens is a keynote speaker. Invitations and agendas were distributed to membership. Subject for the meeting is water allocation in times of drought.

Approval of the March 18, 2008 and April 7, 2008 Minutes

Approval was deferred until the next meeting to allow membership ample review time.

Quarterly report by the Environmental Management Commission as to its operations, activities, programs and progress for the period of January 2008 through May 2008

Dr. David Moreau, Chairman of the Environmental Management Commission was recognized by Co-Chairman Gibson and a report regarding the commission's activities was distributed and is included in the minutes as **Exhibit D**. Dr. Moreau began saying the management commission met yesterday for its regularly scheduled meeting and that the commission made minor revisions to a number of quality rules.

Among rules discussed at their regular meeting, a request to adopt rules governing permitting and inspection of private drinking water wells by local health departments. With a recommendation that the commission adopt the rules, the rules were adopted by the EMC.

Rule amendments to increase Title V Permit fees were adopted by the commission following a hearing officer's report on the subject. Tonnage fees are increased from the current CIP adjusted value of \$18.50 to \$22.50. An additional \$2.50 increase was also adopted until the tonnage fee becomes \$30 on January 1, 2011.

Amendments to 15A NCAC 2H.1005 Stormwater Requirements in Coastal Counties were adopted by recommendation by hearing officers' reports from those public hearings. Public hearings were attended by a total of 560 people, of whom 160 made comments. From those comments, the following recommendation, among other recommendations, was made:

"That new, non-residential development activities that disturb more than 10,000 square feet of land be required to obtain a State Stormwater Permit under the amendments to this Rule. New, residential development would be required to obtain a State Stormwater Permit if that activity is proposed to disturb more than one acre of land or if the proposed activity will require a CAMA Major Permit. Furthermore, under these proposed amendments, new residential development activity that disturbs more than 10,000 square feet of land, but less than one acre, would be required to meet certain minimum measures, such as the installation of rain barrels, permeable pavement or rain gardens on the site.

That the vegetative setback of 30-foot be retained for redevelopment activities, but that this setback be extended to 50 feet for all new development activities.

That all wetlands that are located within the 20 Coastal Counties be excluded from impervious surface wetlands.

That structural stormwater controls other than infiltration basins be allowed for high density projects within ½ mile of shellfishing waters.

Changes were adopted to amend Coastal Stormwater Rules at the commission's February 21 meeting. Three objections were approved, two for reasons of ambiguity, one concerning language used to define wetlands excluded from impervious surface calculations in current revised rules.

In another action, the EMC responded to a request to proceed to public notice and hearing with proposed amendments regarding Non-404 Jurisdictional Water Rules. The response come from an Army Corps of Engineers (ACOE) implementation of the US Supreme Court's "Rapanos Decision," making several instances where the State's waters or wetlands are not isolated, but rather are not under the ACOE's 404 Jurisdiction.

The EMC approved sending draft minutes to a public hearing regarding a request to proceed to public hearing on the Amendments to Clean Air Mercury Rules. The EMC director also recommended that the commission authorize a public hearing and that appointments be made to serve as hearing officers. There will be one or more public hearings regarding the issue.

Among other actions, the EMC adopted a resolution to authorize DENR to negotiate a short term contract with the US ACE on Falls Lake; a resolution was adopted regarding EEP fees; approved a future public hearing on an Amendment to Volatile Organic Compounds Rules and a public hearing to repeal those rules; and approved sending draft amendments to public hearing to allow generators subject to NSPS Subpart IIII and Subpart JJJJ to be eligible for permit exemptions.

Rep. Harrison asked to be more specific on the EEP fee. Dr. Moreau replied as there is an increase on the EEP but that the General Assembly did not accept the increase, but then gave authority to change. The EMC did change it, but it can not become effective until approved by the Legislature. He added that projects are delayed because of the delay in fee approval. Chairwoman Allen added that a date could be set prior to session. Chairman Gibson said that there probably could but was unsure if time would allow. Chairwoman Allen thanked Chairman Gibson.

Update on current drought conditions in light of conservation efforts and recent rain events and a presentation of the Governor's legislative recommendations to respond to the current and future droughts.

Ms. Robin Smith of DENR was recognized by Chairman Gibson to give a drought update and other water use data. Ms. Smith thanked Chairman Ross. Her report is attached to the minutes as **Exhibit E**.

In showing her first slide Ms. Smith noted that there had been rain in the past month that alleviated drought from a part the Piedmont and Inner Banks. She continued

that the 30-day rainfall was a “bit” below normal and that six month groundwater averages were low. She then reviewed groundwater levels in Wayne, Rowan and Haywood counties.

Rep. Samuelson asked about a national seasonal drought outlook forecast. Ms. Smith commented that the drought map did ambiguously define drought areas. Chairman Gibson thanked Ms. Smith and recognized Mr. Franklin Freeman, senior assistant for governmental affairs for the Office of the Governor.

Mr. Freeman said that he was presenting a draft bill that was collaborated on by several parties regarding water allocation and drought management. Mr. Freeman said that one might have seen from handouts that at least half the state remained in drought, including the Charlotte/Gaston area. He added that the drought may not end for the entire state this year, but now is the time, “while the iron is hot,” to pass this legislation. He thanked the Commission. A copy of this draft is attached to the minutes as **Exhibit F**.

Mr. William Ross, Secretary of the Department of Environment and Natural Resources was recognized by Chairman Gibson to discuss aspects of the draft legislation. He opened using poetry by William Blake:

Man was made for joy and woe;
And when this we rightly know
Through the world we safely go.
Joy and woe are woven fine,
A clothing for the soul divine.
Under every grief and pine
Runs a joy with silken twine.

Mr. Ross then outlined six gaps this legislation tries to address: information; conservation; process to declare an emergency; steps to make water management more efficient; water system planning and communication between water systems.

Mr. Ross then asked for membership to view the State as a school bus traveling down a highway. If there is a flat tire, the tire is changed while going down the road. And flat tires will happen just as droughts will come again. He then said that if the State takes the steps outlined in the draft legislation the State will have “found the silken twine of joy that runs through the worst drought in the State’s history.”

Ms. Smith was then recognized to cover sections of the bill.

Ms. Smith began ensuring that all members had a copy of the draft. She then broke down the bill, section by section.

Section 1: Registration of water withdrawals and transfers required: this section changes water reporting thresholds for agricultural users from 1 million gallons of water per day to 100,000 gallons per day. If this draft were to become law, violators who did not report or who do not register will face more stringent penalties. Civil penalties will increase, and there are new types of violations which currently are not in the general statutes.

Section 2: Definitions: Ms. Smith explained the definitions.

Section 3: G. S. 143-354 reads as written: Ms. Smith said that this section gives the Secretary of Environment and Natural Resources the power to declare a water emergency or shortage. Currently the EMC holds that power.

Section 4: Mandatory water conservation measures; severe, extreme and exceptional drought: the EMC will adopt rules establishing minimum water conservation measures.

Section 5: powers and duties of the Department: this section allows large systems to report water use on a weekly basis. In the past year, the Governor requested that water systems begin reporting on a weekly basis to give DENR a better feel of statewide water use. Ms. Smith said that systems did respond, and that now getting water usage reports electronically would better the flow of information and response.

Also included it a section for water audits and planning interconnections to among systems.

Section 6: Water shortage emergency powers: Ms. Smith explained that the power to declare a water emergency would come from notification of the Secretary to the Governor. She added that the idea behind making this change would be to allow more expedient time declaring the emergency without having to assemble the membership of the EMC.

Section 7: Reporting: water systems would begin reporting consumption electronically.

Section 8 and 9: Wastewater collection, treatment and disposal; rules; untreated gray water; allowed uses: changes include allowing gray water usage for landscaping and other activities, and calls to avoid runoff.

Section 10: calls to potentially give money for bulk water reuse facilities.

Section 11: Ms. Smith told the Commission that these were study provisions.

Chairman Gibson thanked Ms. Smith for reviewing the draft bill and asked commission members to frame their questions and concerns now. He continued that he felt there would be changes to the draft and that he wanted to see a rubric of effective suppliers and what the impact of the bill would mean for constituents. He then requested this information before the next ERC regular meeting. Ms. Smith said she could generate a list of local water systems and would try to put the requirements into a form that addressed Chairman Gibson's concerns.

Representative Thomas asked how much of the State's water is contaminated and unusable. Ms. Smith replied that there were up to 20,000 contaminated sites. Representative Thomas followed up asking if there was a State monitored Superfund site list for hazardous sites. Ms. Smith said there were roughly 1500 sites on such a list. Representative Thomas mentioned a case where a groundwater well served seven families with contaminated water, and asked what entity paid to treat such sites. Ms. Smith said there was not a responsible party to pay for such treatment. Representative Harrison said she hoped to add VOC list to test groundwater sources, and added that this was "a great step" on the issue.

Chairwoman Allen asked what measures did DENR and the Governor's office hope to address in the 2008 short session. Ms. Smith said she hoped all would be addressed. Representative Samuelson asked about the transfer of authority from the EMC to the DENR secretary. Ms. Smith said it was an administrative change and that the EMC would be responsible for developing policy to guide the secretary and Governor's office.

Representative Samuelson commented that the secretary would have the power to “flip the switch.” Senator Bingham asked how DENR would determine which systems are effective, of which Ms. Smith said she could not answer today because some systems don’t have a regular water audit. Ms. Smith was thanked for her time.

Presentation of the draft interim report on the allocation, availability and maintenance of water resources in North Carolina

Chairman Gibson recognized Richard Whisnant, Professor of Public Law and Government with the School of Government at the University of North Carolina at Chapel Hill to present an interim report on “The Allocation, Availability and Maintenance of Water Resources in North Carolina.” This and a copy of the power point presentation are attached to the minutes as **Exhibits G and H**, respectively.

Mr. Whisnant told the commission while reviewing his power point presentation that he had a goal to work with staff and DENR and was working to frame issues and identify what needs the most attention. The background of the study comes from House Bill 820, which mandates a study on water allocation in the State and would present options, that he hopes, will be presented at the 2009 session.

Core issues of the study include reviewing water resource processes; knowing as much about supply and demand; investigating water pricing and studying how services are delivered. Mr. Whisnant said that he is looking at neighboring states in his study and that neighboring states are all facing similar problems.

Chairwoman Allen said it was extremely important to press on with the study for the citizens of North Carolina to have a state policy on the matter. Representative Samuelson commented that she read that there is a federal bill changing the definition of water and what entities control various bodies of water. Mr. Whisnant said there was a bill in congress to change the Clean Water Act.

Annual Report on the status of leaking petroleum underground storage tanks, the State cleanup fund, and the Groundwater Protection Loan Fund

Mr. Grover Nicholson, Chief of the Underground Storage Tank Section with the Division of Waste Management, DENR, was recognized by Chairman Gibson to report on “the status of leaking petroleum underground storage tanks, the State cleanup fund, and the Groundwater Protection Loan Fund.” Two items are attached to the minutes as **Exhibits I and J**, a copy of his report and a summary of that report, respectively.

Mr. Nicholson reviewed Exhibit J judiciously, noting that: there are 28,916 regulated petroleum UST’s at 9,000 facilities owned by 5400 owners; there are also 1,076 commercial heating oil USTs; of those regulated USTs, 16 percent were installed more than 30 years ago; that there are approximately 250,000 home heating oil tanks in the State.

Since the program began, 22,554 incidents of leading UST systems are recorded. This program has 13 full-time UST inspectors and two time-limited inspectors. These inspectors conduct complaint inspections; follow up inspections and educational inspections for all facilities. Inspectors average 185 inspections per year.

The program's commercial fund has received roughly \$480 million and distributed \$449 million. The non-commercial fund has received roughly \$110 million and disbursed roughly \$105 million.

Concluding his report, Chairman Gibson opened the floor for questions and comments. Chairwoman Allen said that Mr. Nicholson's staff performed well helping her office deal with a constituent situation. Mr. Nicholson then told the commission that, with the program in its 20th year, the incentives to not have leaks and be cost effective are "not in the right place." Chairman Clodfelter asked how quickly could the program transition to better serve the State, of which Mr. Nicholson said ten years and that it would be difficult to do. Chairman Clodfelter said three to five years would be more appropriate; Mr. Nicholson said they could try to transition in three to five years.

He closed his report saying that 14,000 cases were closed, adding that "the program is working but working slowly."

Discussion of amendments to S. L. 2007-546 (Senate Bill 668, Energy Conservation in State buildings)

Counsel Susan Iddings was recognized by Chairman Gibson to discuss Senate Bill 668, introduced by Senator Janet Cowell. Ms. Iddings said that any major facility, construction project or agency would fall under the bill. Public schools would not fall under the bill. At the heart of the legislation, Ms. Iddings said that buildings would be designed for better water usage, as well as renovations to existing buildings. The bill also requires meters for facilities to calculate water usage. Representative Harrison said that she was the sponsor of the House companion bill, and added that it was important for buildings which public money support be as energy efficient as they can be; not just for conservation but climate change issues, she added.

Chairwoman Allen said that historic buildings needed to be considered.

Mr. Givens then reviewed possible bills for the short session that are discussed in detail in the May 19 minutes.

The meeting was adjourned at 12:28 p.m.

Co-Chair Pryor Gibson
Presiding

Co-Chair Lucy Allen

Jessica Kozma Bennett
Commission Clerk

Co-Chair Pryor Gibson